IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

Arbitration Petition (Ld) No. 637 of 2007

SICAL Logistics Limited ..Petitioners

vs.

1. The Oil and Natural Gas Corporation Limited & ors. ..Respondents

Mr.T.N.Subramaniam, Sr.Counsel i/b Ms.S.Priya for petitioners.
Mr.S.U.Kamdar,Sr.Counsel with Mr.lN.M.Dhruva and Mr.Avinash Singh i/b M. Dhruva and Co. for respondents.

CORAM: S.C.DHARMADHIKARI J
29th October,2007

P.C.

1. This petition is under section 9 of the Arbitration and Conciliation Act, 1996. A prayer therein is to restrain the respondent O.N.G.C. before me from invoking the Performance/Bank guarantee. The only relief that is prayed at this stage is prayer clause (a) of the arbitration petition which reads thus:

> "(a) That pending the commencement and the hearing of the arbitral proceedings, this Hon'ble Court be pleased to grant an injunction restraining the 1st respondent from invoking and encashing the

Performance/Bank Guarantees".

2. I have heard Mr.Subramaniam, learned Senior Counsel appearing for the petitioners and Mr.Kamdar, learned Counsel appearing for the respondents.

3. Perused the arbitration petition and compilation of documents so also further affidavit handed in by Mr.Subramaniam.

4. Upon perusal of all this material, at this prima facie stage, I am fully satisfied that no case is made out for restraining the respondents from encashing the Bank Guarantees in question.

5. What is sought to be invoked and encashed is the Bank Guarantee which was furnished by Yes Bank on 28th June, 2007. This pertains to the vessel which has sunk and no longer available. With regard to this vessel the terms of the Bank Guarantee read thus:

> "WHEREAS Oil and Natural Gas Corporation Ltd., Mumbai Region, Offshore Logistics, 7th floor, 11 High Office Complex, Sion Bandra Link Road, Mumbai 400 017 (India)

(hereinafter called the "OWNER" which expression shall include its successors, assignees and nominees) and M/s SICAL Logistics Ltd. (hereinafter called "THE OPERATOR") HAVE ENTERED INTO AN AGREEMENT DATED 21/05/2007 for manning, running, operating and maintenance of "M.V.Samudrika-10" (hereinafter called the Agreement which expression shall include all amendments thereto."

AND WHEREAS one of the terms and conditions of the said agreement is that the Operator shall furnish a Guarantee to the extent of Rs.100.00 lakhs (Rupees Hundred Lakhs) as specified in the said vessel in care and custody of Operators as Custodian-in-Trust and on behalf of Owner and return of the said Vessel by the Contractor to the Owner in satisfactory condition with all equipments on board the vessel and attended or related to the vessel.

NOW THEREFORE, in consideration of the promises aforesaid and at the request of the Operator, we YES Bank Limited, a Banking Company, incorporated and established under

the Banking Companies Act, having its registered office at 9th floor, Nehru Centre, Discovery of India Bldg., Dr.A.B.Road, Worli, Mumbai 18 at one of its Branchesat 9th floor, Nehru Centre, Discovery of India Bldg., Dr.A.B.Road, Worli, Mumbai 18 at one of its Branches at 9th floor, Nehru Centre, Discovery of India Bldg., Dr.A.B.Road, Worli, Mumbai 18 (hereinafter called the "BANK") do hereby irrevocably and unconditionally Guarantee to you that we will pay you immediately on first demand without demur or protest and irrespective of any contention or dispute between your goodselves and the Operator on receipt of notice from you invoking the guarantee any amount of not returning the vessel by the Operator to the Owner at the expiry of the said Agreement or its earlier termination by the Owner or any extension thereof in satisfactory condition to the satisfaction of the Owner or any amount due to you from the Operator provided that the total sum of our guarantee shall in no event exceed the aggregate limit of Rs.100,00,000/- (Rupees Hundred lakhs only)."

As far as the Performance Guarantees, which are also in the form of Bank Guarantees are concerned, the same Bank in identical terms has guaranteed that upon demand by the respondents in writing which is conclusive and without any proof, as far as the amount becoming due and payable and notwithstanding any dispute under the underlying contract, it would pay the sums under the same.

6. These are the performance guarantees with regard to other vessels, which in the opinion of the respondents have become non functional.

7. From a reading of these unconditional bank guarantees, Mr.Subramaniam neither could point out that invocation is not in terms thereof nor he could prima facie satisfy me that invocation is vitiated by fraud/irretrievable injustice so as to permit this Court to intervene. It is well settled that even when an application under sec.9 is made for such a relief the general principles with regard to invocation of bank guarantee will apply with full force and the Court cannot disregard them. In these circumstances, when all that is urged is that the contract having been terminated, the invocation is impermissible, I am unable to

grant any injunctive relief as prayed. These are matters which are clearly between the bankers and settled principle is thatfulfilment of the terms of such an independent contract cannot be prevented except on the grounds specified above, applies squarely. The application is dismissed. However, invocation as also the payment would be without prejudice to the rights and contentions of both sides in the arbitral proceedings. The petitioners can urge that invocation and payment does not prevent arbitral tribunal from adjudicating upon the disputes with regard to the contractual obligations. The Arbitral Tribunal shall deal with such contentions uninfluenced by the present observations. Petition dismissed. No costs.

(S.C.DHARMADHIKARI J.)